

120 FERC ¶ 61,242
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Joseph T. Kelliher, Chairman;
Sudeen G. Kelly, Marc Spitzer,
Philip D. Moeller, and Jon Wellinghoff.

Linden VFT, LLC

Docket No. ER07-543-001

ORDER GRANTING CLARIFICATION

(Issued September 20, 2007)

1. On May 21, 2007, Consolidated Edison Company of New York (ConEd) filed a request for rehearing of the Commission's order issued on April 19, 2007 in the captioned docket.¹ The April 19, 2007 Order granted authorization for Linden VFT, LLC (Linden)² to sell transmission rights at negotiated rates over facilities owned by ConEd and Cogen Technologies Linden Venture, LP. On June 6, 2007, ConEd requested that the Commission treat its May 21, 2007 request for rehearing as a request for clarification. As discussed below, the Commission will grant the requested clarifications.

Background

2. On February 14, 2007, Linden filed a merchant transmission proposal which would increase transmission capacity on existing AC transmission facilities by 300 MW. The existing transmission facilities are owned by two of Linden's affiliates and were constructed as part of a qualifying cogeneration facility (QF) plant³ under the Public

¹ *Linden VFT, LLC*, 119 FERC ¶ 61,066 (April 19, 2007 Order).

² As discussed in the April 19, 2007 Order, Linden is a new Delaware limited liability company that was formed for the proposed merchant transmission project. It will be 15 percent owned by East Coast Power, L.L.C. (East Coast Power) and 85 percent owned by Aircraft Services Corporation (ASC). ASC is an indirect, wholly-owned subsidiary of General Electric Capital Corporation (GECC).

³ The existing QF plant is owned by Linden's affiliates, Linden Venture and Linden Holding. As part of the VFT project, Linden stated that it will execute a "Shared Facilities and Coordinated Transmission Agreement and Indemnity" with Linden Venture, which provides that the incremental transmission capacity created by the instant proposal will be used for merchant transmission purposes.

Utility Regulatory Policies Act of 1978.⁴ Linden's project also included 1000 feet of new 345 kV transmission line with a capacity of 300 MW connecting PJM Interconnection, L.L.C. (PJM) and the New York Independent System Operator, Inc. (NYISO). Linden stated that its project consisted of less than 1000 feet of new transmission line and a new variable frequency transformer (VFT) system and that the project will be built adjacent to the existing QF plant in New Jersey.

3. Linden stated that the new 345 kV transmission line, which will have a capacity of 300 MW, will connect an existing 230 kV PJM transmission line that bisects the property of the QF plant to Linden's 8,500-foot underground 345 kV oil-filled pipe-type cable that connects the QF plant to ConEd's Goethals substation, located in Staten Island, New York. Under Linden's proposal, the existing transmission capacity of the 345 kV cable will also be increased by 300 MW by adding a radiator to the system for circulating dielectric fluid through the annular space surrounding the cables.

4. In its April 19, 2007 Order, the Commission approved Linden's request for negotiated rates for its merchant transmission project. In particular, the Commission found that Linden had met the criterion that transmission facilities should not impair pre-existing property rights to use the transmission grid of interconnected ISOs, RTOs, or utilities. The Commission found that "the VFT project will create only incremental transmission rights and will not impair pre-existing transmission rights."⁵ The Commission further found that "Linden Venture has first priority for the use of the 345 kV line and, in the event of a curtailment, Linden Venture will be the last to be curtailed."⁶ The Commission concluded:

Linden recognizes that the flow of electrons cannot be traced, but it has, nonetheless, developed procedures to ensure that capacity on the existing 345 kV line associated with the QF plant is treated distinctly from the capacity associated with the VFT facilities, as set forth in the Shared Facilities Agreement between Linden and Linden Venture. Further, Linden agrees that the increased capacity created in the New York portion of the 345 kV line will be governed by the NYISO OATT and that it will abide by the operating

⁴16 U.S.C.A. § 824a-3 (West Supp. 2006).

⁵ 119 FERC ¶ 61,066 at P 32.

⁶ *Id.*

procedures and OATT for PJM. These commitments by Linden provide safeguards to ensure that the incremental capacity is properly segregated from existing capacity.⁷

5. On May 21, 2007, ConEd filed a request for rehearing of the April 19, 2007 Order. In its rehearing request, Con Ed alleges that the Commission improperly authorized Linden to sell transmission scheduling rights over existing capacity owned by Con Edison. In so doing, ConEd argues the Commission departed from its established criteria for merchant transmission projects and deprived Con Edison of a property interest in a utility facility.

6. On May 31, 2007, Linden filed an answer to ConEd's request for rehearing.⁸ In its answer, Linden argues, *inter alia*, that ConEd incorrectly assumes that the April 19, 2007 Order authorizes Linden to sell existing surplus capacity that ConEd owns. Linden asserts that the order does not change ConEd's rights to existing surplus transmission capacity and does not cause the harm alleged by ConEd. Linden points out that the sole effect of the April 19, 2007 Order is to grant Linden's request for approval of negotiated rates for the use of transmission capacity created by the project which is well within the Commission's authority. Linden states that this does interfere with ConEd's right to make use of excess capacity in the 345 kV line.

7. On June 6, 2007, ConEd filed a motion for leave to file a response to an answer. In its motion, ConEd summarizes Linden's May 31, 2007 answer as stating that: (i) the April 19 Order does not vest Linden with rights to use the 345 kV line, (ii) Linden's negotiated rate authorization under the April 19, 2007 Order is limited to incremental "transmission capacity created by the project", and (iii) the Shared Facilities Agreement between Linden VFT and Linden Venture, L.P. is inapposite to this case. ConEd also states that in its answer, Linden effectively disclaims any intent to sell existing surplus capacity on transmission lines owned by ConEd and that Linden concurs with the limitations that should have been imposed in the April 19, 2007 Order. ConEd asserts that Linden's market rate authorization should be limited to incremental capacity that Linden creates through the installation and operation of cooling equipment (*i.e.*, it should exclude existing surplus capacity) during periods when the equipment operates.

⁷ *Id.* at P 47.

⁸ Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2007), prohibits an answer to a protest and/or an answer unless otherwise ordered by the decisional authority. We will accept the answers in the instant proceeding because they provided information that assisted us in our decision-making process.

8. ConEd asserts that Linden's May 31, 2007 answer effectively resolves the controversy between Con Ed and Linden with respect to existing transmission capacity. ConEd states that if the Commission agrees with the statements of Linden as set forth by ConEd, and with the limitations discussed in ConEd's request for rehearing, ConEd requests that the Commission regard its request for rehearing as a request for clarification and grant the requested clarification.

9. On June 15, 2007, Linden filed a response to ConEd's motion. Linden states that in order to eliminate issues and facilitate a resolution of this case, the Commission should clarify the April 19, 2007 Order, consistent with ConEd's request, to hold that: (1) the April 19, 2007 Order limits Linden's market rate authorization to incremental capacity that Linden creates through the installation and operation of cooling equipment and (2) the transmission scheduling rights that Linden sells should exist only during periods when Linden's cooling equipment actually operates and should be limited to the amount of incremental capacity that Linden actually creates.

Discussion

10. Both Linden and ConEd request that the Commission clarify its April 19, 2007 Order granting market based rates to Linden for certain incremental capacity and both parties agree upon the nature of the clarification. Further, ConEd states that it will withdraw its request for rehearing of the April 19, 2007 Order based upon the grant of its requested clarification.

11. Therefore, the Commission will clarify its April 19, 2007 Order to accommodate the parties and because the requested clarification is consistent with the Commission's determinations in its April 19, 2007 Order.⁹ Accordingly, the Commission clarifies that its April 19, 2007 Order limits its grant of market rate authorization to Linden to incremental capacity that Linden creates through the installation and operation of cooling equipment. Further, the Commission clarifies that the transmission scheduling rights that Linden sells should exist only during periods when Linden's cooling equipment actually operates and is limited to the amount of incremental capacity that Linden actually creates.

12. ConEd states that it would withdraw its rehearing request of the April 19, 2007 Order if the Commission granted its requested clarification and agrees with the "limitations" discussed in ConEd's request for rehearing. Although ConEd did not specify exactly the "limitations" to which it was referring, it appears to be referring to the following language:

The order should have limited Linden's market rate authorization to incremental capacity that Linden creates

⁹ 119 FERC ¶ 61,066, at P 32, 47.

through the installation and operation of cooling equipment. The transmission scheduling rights that Linden sells should exist only during periods when Linden's cooling equipment actually operates and should be limited to the amount of incremental capacity that Linden actually creates.¹⁰

This language is consistent with the April 19, 2007 Order and the clarification that the Commission has granted. The request for rehearing is therefore deemed withdrawn and dismissed consistent with ConEd's agreement to withdraw the rehearing if its clarification is granted.

The Commission orders:

- (A) The April 19, 2007 Order is clarified, as discussed in the body of this order.
- (B) ConEd's May 21, 2007 request for rehearing is withdrawn and dismissed, as discussed in the body of this order.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.

¹⁰ ConEd Request for Rehearing at 4.